

FILED IN CHAMBERS  
RICHARD W. STORY  
U.S.D.C. AtlantaIN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

OCT 27 2005

LUTHER D. THOMAS, Clerk  
By:  Deputy Clerk

JOSEPH MCCOY POWELL,	:	
Plaintiff,	:	CIVIL ACTION NO.
	:	1:05-CV-2562-RWS
v.	:	
	:	<u>BIVENS</u> ACTION
T. ZUPPINGER, et al.,	:	28 U.S.C. § 1331
Defendants.	:	

**OPINION AND ORDER**

Plaintiff, an inmate at the Federal Correctional Institution in Estill, South Carolina, has filed this civil rights action without prepayment of the filing fee, other fees or security therefor. According to 28 U.S.C. § 1915(g), a prisoner is prohibited from bringing a civil action in federal court in forma pauperis "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury."

The records of the Clerk of the Court indicate that Plaintiff has filed at least three civil actions and/or appeals which have been dismissed as frivolous. See Powell v. Sawyer, Civil Action No. 3:98-CV-01511-EMK-DB (M.D. Pa., Order of February 17, 1999); Powell v. Sawyer, Court of Appeals Docket No. 99-3202 (3d Cir., Order of April 28, 2000) (affirming district court's dismissal and finding that any appeal


would be frivolous); Powell v. Holland, Court of Appeals Docket No. 03-3396 (3d Cir., Order of April 22, 2004) (affirming district court's dismissal and finding that any appeal would be frivolous).

Plaintiff's allegations regarding burns suffered while an inmate at the United States Penitentiary in Atlanta, Georgia, do not include any allegation of a current imminent threat of serious injury.<sup>1</sup> Thus, leave to proceed in forma pauperis is **DENIED**.

According to the Eleventh Circuit, "the proper procedure is for the district court to dismiss the complaint without prejudice when it denies the prisoner leave to proceed in forma pauperis pursuant to the three strikes provision of § 1915(g). The prisoner . . . must pay the filing fee at the time he initiates the suit." Dupree v. Palmer, 284 F.3d 1234, 1236 (11th Cir. 2002).

**IT IS THEREFORE ORDERED** that the instant action is hereby **DISMISSED WITHOUT PREJUDICE**.

**IT IS SO ORDERED** this 27<sup>th</sup> day of October, 2005.

  
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RICHARD W. STORY  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> This Court further notes that Plaintiff's injury appears to arise from events that occurred during May, 2003. It therefore appears that the instant action is also subject to dismissal as barred by the applicable statute of limitations.